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IN THE HIGH COURT OF JUDCIATURE AT BILASPUR:C.G.

Tr. Pet. No. 01 /2006. Single Bench

APPLICANT :
(In Jail)

Narayan Sanyal,aged 68 yrs., s/o late Shri J. N. Sanyal, r/o P- 7, Senhati Co - opt. Society Ltd., Behala, Kolkata,W.B. At present lodged in the Central Jail,Raipur, C.G.

3570/06
Filed on 24/8/06
by Shri V. S. Tiwari Advocate
24/8/06
R. & D. R. (J)

VERSUS.

NON-APPLICANT :

State of Chhattisgarh, through police station Konta, tahsil Sukuma,dist. Dantewada,C.G.

Application U/s 407 Code of Criminal Procedure, 1973 for transfer of S.Trial no. 144/06 from C/o A.S.J., Dantewada.

The applicant named above respectfully begs to submit as under :

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(43)

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आदेश पत्रक

मामला क्रमांक Tr. Petn. No. 01 of सन् 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06.9.2006

Shri Bhishma Kinger, counsel for the applicant.

Shri Arun Sao, Deputy Govt. Advocate for the State on advance copy.

Arguments on admission heard.

Order passed as follows:

ORAL ORDER

This is a petition filed u/s 407 of the Code of Criminal Procedure for transfer of Sessions Trial No.144/2006, pending in the Court of Addl. Sessions Judge, Dantewada, to any other Court, preferably to Sessions Court, Raipur (C.G).

The brief facts are that the applicant was arrested on 7.4.2006 in connection with Crime No.9/2005 registered at Police station Konta, Tahsil Sukma, Distt. Dantewada for the offence punishable under sections 147, 148, 302/149 read with section 120-B IPC and sections 25 & 27 of the Arms Act.

It is stated that for the security reasons, he is kept in central jail in Raipur. This transfer petition is moved on the ground that the main witnesses of this trial are living in *Salva Judum* Camp (a relief camp for victims of the Naxalite activities) and they are under the influence of Police, therefore, there is no possibility of recording their independent evidence. It is also alleged that at the time of investigation, they were pressurized by the Police and then only they had named the applicant in their statements. It is mentioned in Para-10 of the petition that the name of the

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applicant was falsely inserted by the Police by re-writing the statements of two important witnesses namely Podiyam Joga & Podiyam Dula and in this manner the fabrication of evidence is writ large on record. It is also stated that the applicant is suffering from a painful Palmer's Contracture in his both hands. The further allegations are that there is fear to the life of the applicant while traveling from Raipur to Dantewada as adequate protection is not provided. It is also stated that Dantewada does not have a very competent bar on criminal side. The applicant proposes to engage, at any cost, a reputed criminal lawyer from Calcutta to defend his case, but Calcutta and Dantewada are not easily connected. It is also stated that since suitable infrastructure facilities for lodging and boarding of a Calcutta based leading criminal lawyer at Dantewada are not available, therefore, the applicant will not get a good lawyer's facility. It is further stated that the applicant has no faith in the State sponsored counsel and he is also apprehensive of attitude of counsel from a neighbouring district. It is also stated that the road between Raipur and Dantewada is not good which shall trouble the applicant while taking his journey by Bus from Raipur to Dantewada.

At the arguments, learned counsel for the applicant himself states that the applicant is a branded Naxalite and there is every possibility that he will not get a fair trial at Dantewada and his case should be transferred from Dantewada to any other place

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..... **विरुद्ध** .....

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preferably at Raipur. He submits that the atmosphere of Dantewada town is hostile to the interest of the applicant.

I have heard learned counsel for the applicant at length and have also perused the records of the transfer petition.

Section 407 of Cr.P.C. provides power of High Court to transfer cases and appeals. Sub section(1) of section 407 provides that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise, or that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, then, it may order for transfer of the case as provided in second part of this sub-section.

Learned counsel for the applicant mainly presses this petition on the ground that a fair and impartial inquiry or trial cannot be held at Dantewada. The reason being that it is a Naxalite effected area and the applicant has been branded as a Naxalite and that he would be facing many difficulties pertaining to his health and engagement of a lawyer of his choice etc., etc.

How the applicant will not get a fair and impartial trial at Dantewada has not been substantiated in this petition. It appears that it is a mere apprehension in the mind of the applicant which is not only unfounded, but is unreasonable. For the transfer of a case a mere allegation that there is apprehension that justice will

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not be done, does not suffice. Though the party is not required to demonstrate that justice will inevitably fail, but it has to show that its apprehension is reasonable. To judge the reasonableness of the apprehension the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

Certainly, in this matter, there are no allegations against the Court and the ground of unfair trial is only based on the fact that the witnesses of the case are living in relief camps and they are likely to be influenced by the Police. This cannot be entertained as ground for transfer of case. Merely by transferring the case from a particular court to another court will not result that the witnesses will not live at the place where they are living or they will also move from the said place to the new place of trial. Even if the trial is transferred to some other place, the witnesses will reside there where they are residing and they may come to give evidence from that place itself which is not going to make any difference in the present case. The apprehension appears to be unreasonable.

The other grounds like long journey by Bus, disease of the applicant and non-availability of good counsel are not at all relevant for considering a petition for transfer of a case by the High Court. The illness and non-availability of good criminal lawyer in Dantewada and nearby areas and infracture facilities etc., for

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Roo	5- accommodation of a Calcutta based Lawyer are not germane to hear a petition for transfer of a case as even they do not lead to general convenience of the parties or witnesses. In the opinion of this court, there appears to be no ground for entertaining such a petition which is based on vague and general allegations which do not constitute the grounds as envisaged u/s 407 of the Cr.P.C. The petition has no merits. The same is dismissed at the motion stage. **Sd/-** **SUNIL KUMAR SINHA** **Judge**	

(पीछे देखिये)

13.9.06